

Remarks

Applicants respectfully request reconsideration of the application identified above. Claims 1-21 are pending; claims 1, 10, and 14 are amended. The rejections as conceivable applied to the pending claims are respectfully traversed.

Claims 1-17 stand objected to as containing informalities. Specifically, the Office Action indicates that claims 1 and 15 are lacking transitional phrases. The claims have been amended herewith to include the requested phrases and reconsideration of the rejection is respectfully requested.

Claims 1-30 were rejected under 35 U.S.C. §102(b) as being unpatentable over U.S. Patent Publication 6,015,433, to Roth (“Roth”). Applicants respectfully traverse this rejection as conceivably applied to claims 1-30.

It is well settled that anticipation can only be established by a single prior art reference that identically discloses each and every element of the claimed invention. Anticipation is not shown even if the difference between the claims and the prior art reference are insubstantial. Instead, the cited reference must show exactly what is claimed. *In re Bond*, 910 F.2d 831, 15 U.S.P.Q.2d 1566 (Fed. Cir. 1990); *Structural Rubber Rod. Co. v Park Rubber Co.*, 749 F.2d 707, 223 U.S.P.Q. 1264 (Fed. Cir. 1984).

The Office Action asserts that the Roth patent discloses an expandable surgical cannula that is interpreted to be equivalent to a floating surgical cannula, wherein the cannula can be coated with materials as recited in the pending claims and is able to be inserted into the brain. However, when read more specifically, the Roth patent discloses a stent. A stent is defined as “a small, expandable tube used for inserting in a blocked vessel or other part.” Random House Dictionary, 2010. Additionally, the stent of the Roth patent is perforated. See Col. 2, lines 65-67. In other words, much of the material is removed to create holes in the stent. Further, the stent is “designed with perforation patterns which provide a rolled stent having desirable porosity.” Col. 3, Lines 28-30. Thus, the

stent is intended to allow the transport of fluid from the interior of the stent to the area surrounding the stent.

In contradistinction, the cannula of the present invention, as defined in paragraph 0048 of the published application, is a “surgical tube inserted into a body cavity, duct, or tissue to drain fluid, deliver medication, or allow surgery to be performed at a remote site by inserting instruments through the cannula.” Additionally, throughout the application reference is made to the cannula being a “hollow tube” without discussion of the tube including holes or perforations. In fact, the figures show a solid surface and the draining of fluid could not occur through a cannula having a perforated surface. As stated above, the perforated surface is utilized to increase the porosity of the stent, this is exactly the opposite of the desired effect for the presently claimed cannula.

Also, while the Roth patent discloses the use of the stent for treating intracranial arteries, there is no disclosure for the use of the stent to maintain an opening for surgical procedures. In fact, the stent is an article that can be inserted using the claimed cannula. Thus, the stent is very different and therefore has very different uses from that of the cannula claimed in the presently pending independent claims. In fact, both the size and function of the two devices are very different such that the two devices are not interchangeable.

Since there is no disclosure in the Roth patent of the cannula of the present pending independent claims or the use of the cannula in the manner presently claimed, it is respectfully submitted that the presently pending independent claims are patentable over the Roth patent and reconsideration of the rejection is respectfully requested.

Claims 1-30 were rejected under 35 U.S.C. §102(e) as being unpatentable over U.S. Patent Publication 6,406487, to Brenneman (“Brenneman”). Applicants respectfully traverse this rejection as conceivably applied to claims 1-30.

The Office Action asserts that the Brenneman patent discloses an expandable surgical cannula that can be used for surgery as recited in the presently pending independent claims. However, when read more specifically,

the Brenneman patent discloses a stent. A stent is defined as “a small, expandable tube used for inserting in a blocked vessel or other part.” Random House Dictionary, 2010. The Brenneman patent defines the stent as “endoprostheses which can be deployed into the lumen of an artery or vein, a common bile duct, the urethra or other body passageway. Stents may be employed in such passageways for many purposes, including expansion of a lumen, maintenance of the lumen after expansion, and repair of a damaged intima or wall surrounding a lumen.” Col. 1, Lines 14-19.

In contradistinction, the cannula of the present invention, as defined in paragraph 0048 of the published application, is a “surgical tube inserted into a body cavity, duct, or tissue to drain fluid, deliver medication, or allow surgery to be performed at a remote site by inserting instruments through the cannula.” Additionally, throughout the application reference is made to the cannula being a “hollow tube” that is capable of retracting tissue and maintaining an open corridor through which a surgical operation can be performed. The cannula is “floating” because it does not have to be rigidly affixed to the body at the location of insertion. This “floating” enables the surgeon to alter the angle of entry of the instruments during surgery without damaging surrounding tissue.

Also, while the Brenneman patent discloses the use of the stent for treating intra-cranial arteries, there is no disclosure for the use of the stent to maintain an opening for surgical procedures. There is nothing established that indicates that the stent is capable of performing the jobs that the claimed cannula can perform. In fact, the stent is an article that can be inserted using the claimed cannula. Thus, the stent is very different and therefore has very different uses from that of the cannula claimed in the presently pending independent claims. Actually, both the size and function of the two devices are very different such that the two devices are not interchangeable.

Since there is no disclosure in the Brenneman patent of the cannula of the present pending independent claims or the use of the cannula in the manner presently claimed, it is respectfully submitted that the presently pending

independent claims are patentable over the Brenneman patent and reconsideration of the rejection is respectfully requested.

The remaining dependent claims not specifically discussed herein are ultimately dependent upon the independent claims. References as applied against these dependent claims do not make up for the deficiencies of those references as discussed above. Hence, it is respectfully submitted that all of the pending claims are patentable over the prior art.

In view of the above Remarks, Applicants respectfully submit that the present application is in condition for allowance. A notice to that effect is respectfully requested. If the Examiner believes that it would be helpful to resolve any outstanding issues, the Examiner is invited to contact the undersigned.

Respectfully submitted
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